

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86039964
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p>While much is made has been made during the prosecution of this Application about potential for a manufacturer of beer to also be a manufacturer of other alcoholic beverages, based on the facts here and the present amendment of the Application in its specification of goods, this Applicant has made clear that it seeks no protection for beer (and this Registrant has made clear that it (by its renewal and lack of any further applications) is not seeking protection for anything except beer). The Applicant has nonetheless amended its identification of goods to specifically exclude beers in clearest terms.</p> <p>As has been mentioned, liqueur products and distilled spirits products, and particularly whiskeys, are markedly different from beer and with, as now recorded by the Applicant, the clear exception of having any claim of a product in beer in association with this mark, the reasons for protection cited by the Office are inapplicable to actual facts presented here.</p> <p>Otherwise, Applicant expects that the examining attorney will be able to lift the reservations of a likelihood of confusion and approve this Applicant's Application for Registration to be cleared for publication in the Official Gazette. As published, the Registrant will also have its own opportunity to oppose registration and it is also expected that the Registrant will not have any opposition at such time. Further, Applicant notes that is also not accurate to say that all alcoholic beverages are sold in the same channels. Alcoholic beverage laws in the United States vary widely. Numerous states (it appears that over 30 states) allow wine and beer to be sold in grocery or food stores, but prohibit sales of distilled spirits or liquors. Even in states where liquor sales are permitted in grocery stores, it is often sold in a separate section or aisle of the store, sometimes with its own entrance. A few states also only allow for</p>	

the sale of any alcohol in excess of a certain volume to be sold in designated "liquor" or "package" stores; furthermore, even within these liquor or package stores, wines and spirits are separated within the premises. No reasonable consumer who has ever visited a grocery store or department store would assume that all of the products sold under its roof were related or that beer and wine and liquor are all related. At the same time, it is unreasonable for all consumers to be aggregated together into a single group. While it is true that those who do drink alcoholic beverages may also enjoy more than one kind of alcoholic beverage, just as most people who choose to eat foods are also likely to eat more than one kind of food. In making choices, either of food, beverage or alcoholic beverages, there are typically clear preferences.

It certainly appears clear that consumers of alcoholic beverages are discerning about what they drink and have very definite preferences; such consumers are not likely to be confused when confronted with trademarks on two different types of alcoholic beverages, beer on the one hand and alcoholic beverages other than beer on the other.

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL CLASS

033

DESCRIPTION

Alcoholic beverages, namely, distilled beverages; Alcoholic beverages, namely, spirits; Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey

FILING BASIS

Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)

INTERNATIONAL CLASS

033

TRACKED TEXT DESCRIPTION

~~Alcoholic beverages, namely, distilled beverages;~~ Alcoholic beverages, namely, distilled beverages, excluding, and exclusive of, beer; ~~Alcoholic beverages, namely, spirits;~~ Alcoholic beverages, namely, spirits, excluding, and exclusive of, beer; ~~Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey;~~ Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey, excluding, and exclusive of, beer

FINAL DESCRIPTION	
Alcoholic beverages, namely, distilled beverages, excluding, and exclusive of, beer; Alcoholic beverages, namely, spirits, excluding, and exclusive of, beer; Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey, excluding, and exclusive of, beer	
FILING BASIS	Section 1(b)
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	KEVIN OLIVEIRA ODIN, FELDMAN & PITTLEMAN, PC 1775 WIEHLE AVE STE 400 RESTON Virginia (VA) US 20190-5159
NEW CORRESPONDENCE SECTION	
NAME	Kevin Oliveira
FIRM NAME	ODIN, FELDMAN & PITTLEMAN, PC
INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER	81739.00006
STREET	1775 WIEHLE AVE STE 400
CITY	RESTON
STATE	Virginia
ZIP/POSTAL CODE	20190-5159
COUNTRY	United States
PHONE	(703) 218-2138
FAX	(703) 218-2160
EMAIL	kevin.oliveira@ofplaw.com;sue.williams@ofplaw.com
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Kevin Oliveira/
SIGNATORY'S NAME	Kevin Oliveira
SIGNATORY'S POSITION	Attorney of record, Virginia bar member
SIGNATORY'S PHONE NUMBER	(703) 218-2138
DATE SIGNED	12/22/2014
AUTHORIZED SIGNATORY	YES

CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Dec 22 13:55:09 EST 2014
TEAS STAMP	USPTO/RFR-98.191.72.77-20 141222135509442303-860399 64-500827cdba32dbccca1964 ca2f6334ed3eb77d84481b2fb aa9c5aa9dfeebb4849c-N/A-N /A-20141222135130481863

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86039964** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

While much is made has been made during the prosecution of this Application about potential for a manufacturer of beer to also be a manufacturer of other alcoholic beverages, based on the facts here and the present amendment of the Application in its specification of goods, this Applicant has made clear that it seeks no protection for beer (and this Registrant has made clear that it (by its renewal and lack of any further applications) is not seeking protection for anything except beer). The Applicant has nonetheless amended its identification of goods to specifically exclude beers in clearest terms.

As has been mentioned, liqueur products and distilled spirits products, and particularly whiskeys, are markedly different from beer and with, as now recorded by the Applicant, the clear exception of having any claim of a product in beer in association with this mark, the reasons for protection cited by the Office are inapplicable to actual facts presented here.

Otherwise, Applicant expects that the examining attorney will be able to lift the reservations of a likelihood of confusion and approve this Applicant's Application for Registration to be cleared for publication in the Official Gazette. As published, the Registrant will also have its own opportunity to

oppose registration and it is also expected that the Registrant will not have any opposition at such time. Further, Applicant notes that it is also not accurate to say that all alcoholic beverages are sold in the same channels. Alcoholic beverage laws in the United States vary widely. Numerous states (it appears that over 30 states) allow wine and beer to be sold in grocery or food stores, but prohibit sales of distilled spirits or liquors. Even in states where liquor sales are permitted in grocery stores, it is often sold in a separate section or aisle of the store, sometimes with its own entrance. A few states also only allow for the sale of any alcohol in excess of a certain volume to be sold in designated "liquor" or "package" stores; furthermore, even within these liquor or package stores, wines and spirits are separated within the premises. No reasonable consumer who has ever visited a grocery store or department store would assume that all of the products sold under its roof were related or that beer and wine and liquor are all related. At the same time, it is unreasonable for all consumers to be aggregated together into a single group. While it is true that those who do drink alcoholic beverages may also enjoy more than one kind of alcoholic beverage, just as most people who choose to eat foods are also likely to eat more than one kind of food. In making choices, either of food, beverage or alcoholic beverages, there are typically clear preferences. It certainly appears clear that consumers of alcoholic beverages are discerning about what they drink and have very definite preferences; such consumers are not likely to be confused when confronted with trademarks on two different types of alcoholic beverages, beer on the one hand and alcoholic beverages other than beer on the other.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 033 for Alcoholic beverages, namely, distilled beverages; Alcoholic beverages, namely, spirits; Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Alcoholic beverages, namely, distilled beverages;~~ Alcoholic beverages, namely, distilled beverages, excluding, and exclusive of, beer; ~~Alcoholic beverages, namely, spirits;~~

Alcoholic beverages, namely, spirits, excluding, and exclusive of, beer; ~~Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey;~~ Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey, excluding, and exclusive of, beer

Class 033 for Alcoholic beverages, namely, distilled beverages, excluding, and exclusive of, beer; Alcoholic beverages, namely, spirits, excluding, and exclusive of, beer; Alcoholic beverages, namely, whiskey, rye whiskey, rye malt whiskey, malt whiskey, wheat whiskey, bourbon whiskey, corn whiskey, blended whiskey, light whiskey, spirit whiskey, straight whiskey and flavor-infused whiskey, excluding, and exclusive of, beer

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

KEVIN OLIVEIRA
ODIN, FELDMAN & PITTLEMAN, PC
1775 WIEHLE AVE STE 400
RESTON
Virginia (VA)
US
20190-5159

Proposed:

Kevin Oliveira of ODIN, FELDMAN & PITTLEMAN, PC, having an address of
1775 WIEHLE AVE STE 400 RESTON, Virginia 20190-5159
United States
kevin.oliveira@ofplaw.com;sue.williams@ofplaw.com
(703) 218-2138
(703) 218-2160
The attorney docket/reference number is 81739.00006 .

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Kevin Oliveira/ Date: 12/22/2014

Signatory's Name: Kevin Oliveira

Signatory's Position: Attorney of record, Virginia bar member

Signatory's Phone Number: (703) 218-2138

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to

the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: Kevin Oliveira
ODIN, FELDMAN & PITTLEMAN, PC
1775 WIEHLE AVE STE 400
RESTON, Virginia 20190-5159

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